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No. 42] NEW DELHI, FRIDAY, MARCH 5, 1954

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 20th February 1954

S.R.Q. 809—Whereas the election of Shri Tribeni Kumar, as a member of the Legislative Assembly of the State of Bihar, from the Parbatta constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Chandra Mishra, son of Shri Suraj Narain Sharma, Village and Post Office Kanhaiyachak, P.S. Parbatta, District Monghyr;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:

Shri Basu Prasad, Retired District Judge—*Chairman*.

Shri Hargobind Prasad Sinha, Retired District Judge—*Member*.

Shri Aditya Narayan Lal, Advocate—*Member*.

ELECTION PETITION NO. 7 OF 1953

In the matter of bye-election to the Bihar State Legislative Assembly from Parbatta Constituency in the district of Monghyr.

Shri Ramchandra Mishra, son of Shri Suraj Narain Sharma, by caste Bhumihar, by profession cultivator, resident of village Kanhaiyachak, P.O. Kanhaiyachak, P.S. Parbatta, district Monghyr—*Petitioner*.

Versus

1. Shri Tribeni Kumar, son of Shri Bindo Kumar, by caste Bhumihar, resident of village Dumaria Buzurg, P.S. Parbatta, district Monghyr.

2. Shri Lakhan Lal Mishra, son of Shri Manki Mishra, by caste Bhumihar, resident of village Kanhaiyachak, P.O. Kanhaiyachak, P.S. Parbatta, district Monghyr.

3. Shri Suraj Narain Sharma, son of Shri Mitri Sharma, by caste Bhumihar, resident of village Kanhaiyachak, P.O. Kanhaiyachak, P.S. Parbatta, district Monghyr.—*Respondents*.

(1) Mr. Baldeo Sahay,

(2) Mr. Lal Narain Singh,

(3) Mr. B. P. Samaiyar—*Advocates*.—*For the petitioner*.

- (1) Mr. A. N. Chakravarti,
- (2) Mr. K. P. Verma (No. 2)—*Advocates—For respondent No. 1.*

Ramchandra Mishra, an elector of village Kanhaiyachak, in Parbatta Constituency, has filed this election petition under sections 80 and 81 of the Representation of the People Act, 1951, for a declaration that the election of Tribeni Kumar (respondent No. 1) is void and that Lakhan Lal Mishra (respondent No. 2) has been duly elected, or in the alternative, for a declaration that the election is wholly void.

There were four candidates, namely, Tribeni Kumar (respondent No. 1), Lakhan Lal Mishra (respondent No. 2), Suraj Narain Sharma (respondent No. 3) and one Kedar Nath Sharma (not a party in this proceeding), who had filed nomination papers, but the nomination of Kedar Nath Sharma was rejected on the date of scrutiny by the Returning Officer, while the nomination papers of the other three candidates were accepted. Subsequently, Suraj Narain Sharma withdrew his candidature. There was, thus, a straight fight between the two remaining candidates, Tribeni Kumar and Lakhan Lal Mishra, who contested the election. The polling took place on the 12th April, 1953. Tribeni Kumar secured 14,326 votes, whereas 13,595 votes were secured by Lakhan Lal Mishra. Tribeni Kumar was declared duly elected and his election was published in the Bihar Gazette, dated the 18th April 1953. Tribeni Kumar lodged with the Returning Officer the return of election expenses, the notice of which was published in the Bihar Gazette, dated the 10th June 1953. The election petition was presented to the Election Commission on the 23rd June 1953.

The petitioner contends that the nomination papers of Tribeni Kumar were improperly accepted and those of Kedar Nath Sharma improperly rejected and that the result of the election has been materially affected by such improper acceptance and improper rejection of the nomination papers.

The petitioner, next, alleges that the election of Tribeni Kumar is void by reason of corrupt and illegal practices committed by him and his agents or by other persons with the connivance of the returned candidate and his agents. It is alleged that one Ramanand Tewari, M.L.A., a Socialist leader, committed the corrupt practice of undue influence on police officers, military police, constables, dafadars and choukidars with the connivance of respondent No. 1. It is, further, alleged that respondent No. 1 and some of the Socialist workers, with the connivance of respondent No. 1, procured and attempted to procure votes on behalf of respondent No. 1 from some individuals in the names of other persons, some of whom were either dead or were in Central Jail Bhagalpur at the time of the election and some of whom had already voted. It is, then, alleged that respondent No. 1 and his agents, with the connivance of respondent No. 1 had committed the corrupt practice of bribery with the object of inducing electors to vote for respondent No. 1. The petitioner states that respondent No. 1 and one Ramanand Choudhry of village Dumaria Buzurg exercised the corrupt practice of undue influences and interfered with the free exercise of electoral right of the voters of Dumaria Buzurg, Aguani and Khirahi by holding out threats to them.

The petitioner also contends that the result of the election has been materially affected by non-compliance with the provisions of Section 129 of the Representation of the People Act, 1951, and other sections of the Act and the Rules made thereunder. It is said that the then Assistant Sub-Inspector of Police of Choutham, on deputation at Kanhaiyachak polling station, members of the police force and some Choukidars on duty, either alone or along with Ramanand Choudhry, Headmaster of Beldaur H.E. School and polling agent of respondent No. 1 at Dumaria Buzurg, acted for the furtherance of the prospects of the election of Tribeni Kumar by persuading and influencing the voters to vote for him. It is, then, said that the voters at the polling stations at Nayagaon (Jorawarpur M.E. School and Mihud-dinpur H.E. School) were stopped from entering the enclosures ten minutes before 4 P.M. with the result that about 500 and 200 voters respectively of those polling stations could not exercise their right of franchise. The petitioner, further, alleges that poll took place in L.P. Schools, instead of U.P. Schools at Kanhaiyachak, Dumaria Buzurg, Temtha, Thebbia and Lagar. It is contended that many voters were misled due to the change of places of voting and could not exercise their right of franchise.

The petitioner, lastly, contends that Lakhan Lal Mishra (respondent No. 2) would have been returned uncontested if the nomination papers of respondent No. 1 had been rejected and that Lakhan Lal Mishra would have obtained the majority of valid votes, but for the votes obtained by Tribeni Kumar by the aforesaid corrupt practices.

The other allegations set forth in the election petition were not pressed.

The petitioner has annexed a schedule (Schedule "A") giving list of particulars of corrupt and illegal practices committed by and on behalf of respondent No. 1.

The election petition is contested by respondent No. 1 who has filed a written statement alleging that he had been declared duly elected to Bihar State Legislative Assembly from Parbatta Constituency at the last general election, but the election was declared wholly void by the Tribunal, then constituted to hear the election petition filed by Lakhan Lal Mishra, one of the defeated candidates, on the ground that the nomination of one of the candidates had been improperly accepted. At the bye-election, which followed, there was fight between respondent No. 1, the Praja-Socialist Party candidate, and respondent No. 2, the Congress candidate, and respondent No. 1 was again declared duly elected. The petitioner, who is the first cousin of respondent No. 2, has been set up to fight this election petition.

Respondent No. 1 has asserted in the written statement that his nomination papers were properly accepted and that the nomination papers of Kedar Nath Sharma properly rejected. He has denied the various allegations of corrupt and illegal practices and non-compliance with the provisions of the Representation of the People Act and the Rules made thereunder, as alleged in the election petition and the schedule annexed thereto. He has alleged that he took all reasonable means for preventing the commission of any corrupt and illegal practice at the election. He contends that the election petition as framed is not maintainable especially in the absence as respondent of Kedar Nath Sharma, who, according to the petitioner, was a duly nominated candidate.

Respondent No. 2, the defeated candidate has filed a written statement supporting the election petition.

The following issues have been framed for decision.

ISSUES

1. Is the election petition as framed maintainable?
2. Is the election petition maintainable in the absence of Shri Kedar Nath Sharma as respondent?
3. Was the nomination of Shri Kedar Nath Sharma improperly rejected? If so, has the result of the election been materially affected by such rejection?
4. Was the nomination of Shri Tribeni Kumar improperly accepted? If so, has the result of the election been materially affected by such acceptance?
5. Did respondent No. 1 or his agent or any other person with the connivance of respondent No. 1 or his agent commit corrupt practices as alleged by the petitioner? If so, has the result of the election been materially affected thereby?
6. Has the result of the election been materially affected by the non-compliance with the provisions of the Representation of the People Act and the Rules made thereunder?
7. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 3.—It appears that Kedar Nath Sharma had filed three nomination papers (Exts. 3, 4 and 5), but all those nomination papers were rejected by the Returning Officer, at the time of scrutiny, mainly on the ground that the necessary deposit of Rupees 250, as required by section 34 of the Representation of the People Act, 1951, had not been made. The petitioner has alleged in paragraph 7 of the election petition that Kedar Nath Sharma had deposited as security Rupees 250 at the time of presenting his nomination paper at the last General Election, which amount he intended to be utilised as security at the time of filing the nomination papers at the bye-election, and he also filed a written application to that effect, but the Returning Officer improperly rejected his nomination papers. In paragraph 4 of his written statement, respondent No. 1 has contended that the security previously furnished by Kedar Nath Sharma had been forfeited under section 158(2) of the Act and that he having failed to deposit the necessary security, in compliance with the provisions of section 34 of the Act at the time of presentation of his nomination papers at the bye-election, his nomination was rightly rejected by the Returning Officer. We hold that the contention of the respondent is, in view of the provisions of section 34(2) and section 36(2) (d) of the Act, quite correct. There was no deposit of

security within the meaning of section 34 and so the Returning Officer was right in rejecting the nomination of Kedar Nath Sharma. It may be noted that at the last stage of the hearing, at the time of the argument, the petitioner's advocate did not press this ground.

The first part of this issue is, therefore, answered in the negative. In view of this answer, the second part of this issue does not arise.

Issues Nos. 1 and 2.—These issues have not been seriously pressed by the respondent. We find that Kedar Nath Sharma was not a duly nominated candidate inasmuch as he did not deposit the necessary security, as required by section 34 of the Act. It was, therefore, not necessary for the petitioner to join Kedar Nath Sharma as respondent to the election petition as required by section 32 of the Act. We also find that there is no such defect in the frame of the election petition as would make the petition not maintainable.

These issues are, therefore, decided in favour of the petitioner.

Issue No. 4.—It is alleged in paragraph 6 of the election petition that the nomination of Tribeni Kumar (respondent No. 1) was improperly accepted by the Returning Officer and that the result of the election has been materially affected by such improper acceptance.

Tribeni Kumar had filed 8 nomination papers [Exts. 1 to 1(e) and Exts. A and A1]. It appears that the Returning Officer rejected three of the nomination papers [Exts. 1(d), 1(e) and Ext. A] and accepted the remaining 5 [Ext. 1, Ext. 1(a), Ext. 1(b), Ext. 1(c) and Ext. A1]. The nomination papers accepted bear serial Nos. 18, 16, 15, 5 and 7. The petitioner has alleged in the election petition that the nomination papers Nos. 18 and 16 are invalid on the ground that the candidate has, in those nomination papers, appointed two persons as his election agents. The nomination paper No. 18 (Ext. 1) shows that Tribeni Kumar, son of Bindo Kumar, that is, the candidate himself, has been appointed as the election agent. The nomination paper No. 16 [Ext. 1(a)] also shows the same thing. In nomination paper No. 18 in the column of appointment of election agent, there is a line apparently striking the words "*Ke putra*" after the words "*Bindo Kumar*". Tribeni Kumar (R.W. 30 for respondent No. 1) has explained in his evidence that the words "*Ke putra*" were not penned through, and the line appearing to pen through those words was in continuation of the head line of the previous word "*Kumar*". This explanation was also offered to the Returning Officer. The explanation is quite acceptable and it cannot be held that Tribeni Kumar had appointed two election agents, namely, Tribeni Kumar and Bindo Kumar. The matter is set at rest by the writing below that line, "*Yane upne*", which clearly shows that Tribeni Kumar had appointed himself as election agent. In regard to nomination paper No. 16, there is absolutely no room for contention that two persons, Tribeni Kumar and Bindo Kumar, had been appointed as election agents.

The nomination paper No. 16, (Ex. 1a), is also attacked on the ground that the year of the election is not stated at the top of that document. The order of the Returning Officer (Ext. 9a) shows that the defect was of a very minor and trivial character and was not substantial. We agree to this view.

The nomination paper No. 5 (Ext. 1c) has been challenged on the grounds that the father's name of Tribeni Kumar has not been entered therein and the word "Bihar" has not been mentioned before the words "Legislative Assembly" at the top. The order of the Returning Officer (Ext. 9b) shows that the above objection was not of substantial character as the identity of the candidate was not in doubt and that the omission of the word "Bihar" before the words "Legislative Assembly" was of a very minor and trivial character. We are in agreement with the views of the Returning Officer.

It is noteworthy that no objection, whatsoever, was raised to the validity of the nomination papers Nos. 15 and 7 [Exts. 1(b) and A1] and those nomination papers are absolutely flawless. The nomination of Tribeni Kumar must be held to be valid even if one nomination paper is in order and free from defect.

We, therefore, find that the nomination of Tribeni Kumar was not improperly accepted. In view of this finding, the second part of this issue does not arise.

Issue No. 5.—The petitioner has alleged several kinds of corrupt practices committed by respondent No. 1, or his agent, or any other person with the connivance of respondent No. 1 or his agent. We shall, first, deal with the corrupt practice said to have been committed by Ramanand Tewari, M.L.A., a Socialist leader. The allegations regarding Ramanand Tewari are set forth in paragraph

8(a) of the election petition and paragraph 1 of schedule "A", giving list of particulars of corrupt practices. It is alleged in paragraph 8(a) of the election petition that Ramanand Tewari M.L.A., a Socialist leader, exercised undue influence on police officers, military police, constables, dafadars and choudikars with the connivance of respondent No. 1. Paragraph 1 of schedule "A" recites that Ramanand Tewari, during the period of 5 days preceding the day of election (i.e. during the period from 7th April 1953 to 11th April 1953) and also on the day of election (i.e. on 12th April 1953) abetted the assistance, and attempted to procure the assistance, of the policemen on duty at the following polling stations, (i) Kanhaiyachak, (ii) Lagar, (iii) Bharatkhand, (iv) Pipralatif, (v) Rampur, (vi) Muskipur, with the connivance of respondent No. 1 for the furtherance of the prospects of the election of Tribeni Kumar respondent No. 1. So, while paragraph 8(a) of the election petition contemplates the corrupt practice of undue influences defined in Section 123(2) of the Representation of the People Act, 1951, paragraph 1 of the schedule refers to another kind of corrupt practice described in section 123(8) of the Act. In other words, particulars of the corrupt practice of undue influence committed by Ramanand Tewari have not been stated and, in the body of the election petition, there is no indication that Ramanand Tewari procured or attempted to procure the assistance of policemen on duty at the polling stations.

Mr. Baldeo Sahay, the counsel for the petitioner, has, in his argument, submitted that Ramanand Tewari committed the corrupt practice described in section 123(8) of the Act. The particulars of that corrupt practice, as stated above, have been given in paragraph 1 of schedule "A". The allegations in that paragraph are that Ramanand Tewari on certain dates and at certain polling stations, aided in obtaining assistance, and attempted to procure assistance, of the police, men on duty with the connivance of respondent No. 1 for the furtherance of the prospects of the election of respondent No. 1. Mr. Baldeo Sahay has invited the attention of the Tribunal to paragraph 5(a) of the written statement of respondent No. 1 wherein there is denial of the allegations regarding Ramanand Tewari. He has contended that there is no specific denial of the fact that Ramanand Tewari attempted to procure the assistance of the policemen on duty, although there is denial of the allegation that policemen gave help to further the prospects of the election of respondent No. 1. In paragraph 5(a) of the written statement there is also a denial of the fact that Ramanand Tewari was in Parbatta Constituency for 5 days. In paragraph 5 of the written statement it is said that the allegations made in paragraph 8 of the election petition are totally false and in paragraph 1 of the written statement it is stated that the allegations in the election petition that are not expressly accepted are denied and the respondent puts the petitioner to the strict proof thereof. We are inclined to hold that there is denial, by necessary implication, of the fact that Ramanand Tewari attempted to procure the assistance of the policemen on duty. When the respondent has, as in the present case, put the petitioner to the strict proof of certain allegations, it will be necessary for the petitioner to prove those facts before he can ask the Tribunal to interfere with the result of the election.

It has been argued on behalf of the respondent that the names of policemen on duty, whose assistance was abetted or attempted to be procured, have not been stated in the schedule giving list of particulars of the corrupt practices. In view of the provisions of section 83(2) of the Act, it was necessary for the petition to set forth full particulars of the corrupt practice and the particulars would not be full without mentioning the names of the policemen on duty whose assistance was abetted or attempted to be procured. In the absence of such names, it was difficult for the respondent to meet the charge under this head.

Let us, now, examine the evidence produced by the parties in regard to Ramanand Tewari. 15 witnesses on behalf of the petitioner, namely, P.W. 5, P.W. 8, P.W. 10, P.W. 13, P.W. 14, P.W. 16, P.W. 19, P.W. 20, P.W. 21, P.W. 22, P.W. 29, P.W. 30, P.W. 32, P.W. 37 and P.W. 39 and one witness on behalf of respondent No. 2 (R.W. 1) have deposed about the activities of Ramanand Tewari at different polling stations within this constituency. Of these witnesses, P.W. 5, P.W. 8, P.W. 22, and P.W. 29 have deposed about the activities of Ramanand Tewari at Kanhaiyachak polling station; P.W. 13, P.W. 21 and R.W. 1 (for respondent No. 2) about his activities at Lagar polling station; P.W. 10, P.W. 14, P.W. 16 and P.W. 19 about his activities at Bharatkhand polling station; P.W. 30, P.W. 32 and P.W. 39 about his activities at Pipralatif polling station; P.W. 37 about his activities at Rampur polling station; and P.W. 20 and R.W. 1 (for respondent No. 2) about his activities at Muskipur polling station. Analysing their evidence it will appear that Ramanand Tewari was seen at Rampur polling station at about 8-30 A.M., at Muskipur polling station between 8-30 A.M. and

9 A.M., at Pipralatif polling station between 9 and 9-30 A.M., at Kanhaiyachak polling station at about 11-30 A.M., at Lagar polling station at about 1-30 P.M. and at Bharatkhand polling station at about 3 P.M., on the day of polling, namely, 12th April 1953. The witnesses have said that Ramanand Tewari asked the constables on duty to help the Socialist candidate, Tribeni Kumar. P.W. 5, P.W. 8, P.W. 13, P.W. 14, P.W. 21, P.W. 32, P.W. 37 and P.W. 39 have not stated in their evidence as to what kind of help was sought from the policemen on duty. But the evidence of P.W. 10, P.W. 16, P.W. 19, P.W. 20, P.W. 22, P.W. 29, P.W. 30 and witness No. 1 for respondent No. 2 indicates that the policemen on duty were asked to secure votes for Tribeni Kumar. There is, thus, evidence about the alleged activities of Ramanand Tewari at the six polling stations on the day of polling, but there is no evidence at all regarding the alleged activities of Ramanand Tewari during the period of 5 days preceding the date of polling. It is noteworthy that there is no evidence showing that any complaint was made to any Presiding Officer regarding the illegal activities of Ramanand Tewari. The polling agents of the rival candidate, Lakhan Lal Mishra, were present at the different polling stations, but none of them, nor the rival candidate himself, who is said to have seen Ramanand Tewari speaking to the constables at Muskipur and Lagar polling stations, made any complaint in this matter to the Presiding Officers. This is a circumstance which considerably weakens the petitioner's story.

The learned counsel for the petitioner has asked the Tribunal to place reliance on the evidence of P.W. 10, P.W. 19, P.W. 21, P.W. 22 and P.W. 29. P.W. 10 (Basuki Nath Roy) was the polling agent of the rival candidate at Bharatkhand polling station. He is Secretary of the Monghyr District Congress Committee and is a sitting member of the Bihar Legislative Assembly. He says that he protested against the action of Ramanand Tewari and told him that it did not become him to act in that fashion. But it is really strange that he did not file any written complaint to the Presiding Officer in this matter. P.W. 19 (Ali Hassan) who was on duty as Dafadar at Bharatkhand polling station, has made improvement upon the story told by P.W. 10 by saying that after Ramanand Tewari went away, he heard one of the constables asking the voters to vote for Tribeni Kumar. This witness also did not make complaint in this matter to the Presiding Officer or any other person. P.W. 21 (Jagnath Kuar), a literate constable, who was posted on duty at Lagar polling station, has said in his cross-examination that he was at a distance of 100 yards from Ramanand Tewari at the time he (Ramanand Tewari) was talking to the constables. It is extremely doubtful that this witness was able to hear what Ramanand Tewari was talking. The witness says that Ramanand Tewari was talking to the constables of his party, but still he did not make any complaint in this matter to his superior officers. P.W. 22 (Jang Bahadur Singh, Dafadar), who speaks about the activities of Ramanand Tewari at Kanhaiyachak polling station, was posted on duty at Nayagaon polling station that day. He says that he came to Kanhaiyachak at 11 A.M. to cast his vote and stopped there till 12 Noon. From his evidence it appears that Ramanand Tewari was speaking to two constables in a low voice. His evidence, further, shows that he first saw Ramanand Tewari addressing a meeting at Parbatta on 11th April 1953 and since that date he knows him. The certified copy of the ordersheet of a criminal case (Ext. E), in which Ramanand Tewari was accused, shows that he (Ramanand Tewari) was present in the Court at Monghyr on 11th April 1953. Ramanand Tewari (R.W. 25 for respondent No. 1) has said that he stopped at Monghyr for the whole day on 11th April 1953. Thus, the evidence of P.W. 22 is of doubtful nature. P.W. 29 (Asraf Khan) has said in his evidence that Ramanand Tewari addressed one or two constables outside the enclosure of the booth at Kanhaiyachak. The evidence of the above 5 witnesses, on which great reliance has been placed by the petitioner, does not appear to us to be reliable, convincing and satisfactory. We have also considered the evidence of the other witnesses and find it much below the mark.

On the other hand, Ramanand Tewari (R.W. 25 for respondent No. 1) has denied in his evidence that he moved in Parbatta Constituency on 12th April 1953. He has admitted that he visited that Constituency on one day only, namely, on 10th April 1953, when he addressed two meetings at two different villages within Parbatta Thana. He has said that he left that locality on the night of 10th April 1953, came to Monghyr on the following morning, stopped at Monghyr for the whole day on 11th April 1953, left for Patna on the night of 11th April 1953 and stopped at Patna for the whole day and night on 12th April 1953.

Some other witnesses for respondent No. 1, namely, R.W. 1, R.W. 2, R.W. 3, R.W. 7, R.W. 8, R.W. 10, R.W. 11, R.W. 14, R.W. 20, R.W. 25, R.W. 28 and R.W. 30, have deposed to the effect that Ramanand Tewari did not visit the above named

six polling stations in the day of polling. R.W. 20 (Ram Narain Choudhry) is a member of Bihar Legislative Assembly and is an educated man. He was polling agent of the Socialist candidate at Kanhaiyachak polling station and his evidence shows that Ramanand Tewari did not visit that polling station between 11 and 12 A.M. or at any time that day.

Upon consideration of the entire evidence, we find that the petitioner has failed to prove that Ramanand Tewari abetted the assistance, or attempted to procure the assistance, of policemen on duty for the furtherance of the prospects of the election of Tribeni Kumar.

We shall, next, deal with the corrupt practice said to have been committed by respondent No. 1 and some Socialist workers with connivance of respondent No. 1 by procuring and attempting to procure votes from persons by means of false personation. The allegation regarding this corrupt practice are set forth in paragraph 8(b) of the election petition and the particulars are given in paragraph 2 of the schedule "A". This corrupt practice is defined in section 123(3) of the Representation of the People Act, 1951, which runs as follows, "The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote".

In the list of particulars, six instances of false personation have been given, but the petitioner, at the hearing, pressed only three instances, namely, false personation of (a) Sahdeo Singh, (b) Doman Das, and (c) Sarjug Singh. It has been argued on behalf of the petitioner that there is no specific denial, in the written statement of respondent No. 1, of the fact that there was false personation of the persons named above at the polling, although there is emphatic denial that respondent No. 1 or any person on his behalf connived or encouraged such false personation. But, upon reading the entire written statement, we are inclined to hold that there is denial, by necessary implications, just as in regard to the allegations against Ramanand Tewari, that there was such false personation. It will, therefore, be necessary for the petitioner to prove all the material facts alleged by him.

We propose to deal first with the alleged false personation of Doman Das. Doman Das was recorded as elector in serial No. 375 in village Parbatta (*vide* Ext. B, marked copy of Electoral Roll). It is the common case of both the parties that this Doman Das was son of Ranjit Das. The petitioner has alleged that Doman Das was dead on the date of polling and that Tribeni Kumar procured a vote in his name by means of false personation. He has examined some witnesses to prove that Doman Das died at village Sakrohra, where he had some cultivation, 4 or 5 years ago. The Death Register of village Sakrohra has not been produced and there is no evidence that the Death Register is not available. No person of village Sakrohra has been examined to prove that Doman Das died in that village 4 or 5 years ago. The oral evidence of the petitioner's witnesses, namely, P.W. 23, P.W. 35 and P.W. 38, on this point does not appear to be reliable. P.W. 23 and P.W. 35 have said in their evidence that Doman Das has left a son, named Mathura Das, who is alive. Mathura Das has not been examined in this case. The Electoral Roll, wherein the name of Doman Das is entered as an elector, raises a presumption that Doman Das was alive at the time of preparation of the Roll, although it may not be a conclusive evidence of that fact. The Electoral Roll is, thus, clearly against the petitioner's case that Doman Das died 4 or 5 years ago.

Respondent No. 1 has examined two witnesses (R.W. 21 and R.W. 26) to prove that Doman Das, son of Ranjit Das, died of cholera at Rishikund Mela in the month of May, 1953, that is, after the date of polling. R.W. 21 (Mohan Das) and R.W. 26 (Chintaman Sah) have deposed that they had accompanied Doman Das to the Mela and were present at his death. Mohan Das is nephew of Doman Das. We do not see sufficient ground to discard their evidence.

We, therefore, hold that it has not been proved that Doman Das, recorded in serial number 375 of the Electoral Roll, was dead on the date of polling.

During the hearing of the case, the Tribunal examined the ballot papers in Court in presence of both parties and found that the ballot paper issued to the elector of serial number 375 was in the box of Tribeni Kumar. The petitioner has examined two witnesses, P.W. 23 and P.W. 36, to prove that Tribeni Kumar

procured this vote by means of false personation of Doman Das of serial number 375. P.W. 23 is another Doman Das, son of Basuli Mandal, of village Parbatta. He has said in his evidence that he was employed for issuing *chithas* to voters at Parbatta polling station on behalf of Tribeni Kumar and that he falsely personated for Doman Das, son of Ranjit Das, at the bidding of Tribeni Kumar and cast vote in the name of that Doman Das. It is noteworthy that the name of this Doman Das, son of Basuli Mandal, has not been disclosed in the particulars given in the schedule. Doman Das (P.W. 23) is a student of young age and the very fact that he had no scruples to impersonate another man indicates his low character and it will not be safe to rely on his testimony unless it is corroborated by some reliable and trustworthy evidence. The witness admits that his name is not entered in the Electoral Roll. From his cross-examination it appears that Mahanth Moti Das, polling agent of the rival candidate, objected to the identity of this voter before the Presiding Officer. But, as the objector did not make the necessary deposit of Rupees ten, his objection was not heard. This is a story which can hardly be believed. The witness has said in his cross-examination that he cast his vote at 8-30 A.M. From the marked copy of the Electoral Roll (Ext. B) it appears that ballot paper number 6127 was issued to the elector of serial number 375 and that 126 ballot papers had already been issued before. The polling commenced at 8 A.M. and it does not seem possible that within a short period of half an hour 126 ballot papers were issued. This is also a circumstance which throws doubt on the credibility of this witness.

P.W. 36 (Jagdish Das) has attempted to corroborate the statement of Doman Das (P.W. 23). This witness says that he had gone to Parbatta polling station to cast his vote when he heard Tribeni Kumar asking Doman Das (P.W. 23) to impersonate Doman Das who was dead. The witness has deposed that he heard the talk of Tribeni Kumar at about 9 A.M. and that he stopped at that polling station for about ten minutes only. So, it would appear that he left that polling station at about 9-10 A.M., after casting his vote. He has clearly said in his evidence that he did not go to that polling station again that day. From the marked copy of the Electoral Roll (Ext. B) it appears that ballot paper bearing number 6517 was issued to this witness. So, 516 ballot papers had already been issued before this witness was given a ballot paper. It is impossible to believe that within a short period of one hour or so, 516 ballot papers were issued. So, this witness must have gone to the polling station much later than 9 A.M. and he could not have heard any such talk between Tribeni Kumar and Doman Das at about 9 A.M. We do not consider the evidence of P.W. 36 to be at all reliable. The result, therefore, is that it has not been proved by any satisfactory evidence that there was false personation of the elector, named Doman Das, entered in serial number 375, at the instance of respondent No. 1.

Sachchidanand Das (R.W. 19) and Mohan Das (R.W. 21) have deposed that Doman Das, son of Ranjit Das, had gone to the polling station to cast his vote. Mohan Das has said that he and his uncle, Doman Das live in the same house and that he had also gone to cast his vote. This part of his evidence does not appear to be acceptable because the Electoral Roll does not contain his name as an elector. But there is no good ground to reject the evidence of Sachchidanand Das who acted as a polling agent at Parbatta polling station. Even supposing that the respondent has failed to prove that Doman Das, son of Ranjit Das, actually went to the polling station and cast his vote, it cannot be inferred from such failure on the part of the respondent that there was false personation at the instance of respondent No. 1. The petitioner, as has been discussed above, has failed to establish that Doman Das, son of Basuli Das, falsely personated for Doman Das of serial number 375 at the instance of respondent No. 1. It is noteworthy that there are four other electors in that village bearing the name Doman; they are Doman Sahu in serial number 91, Doman Mahto in serial number 163, Doman Gope in serial number 429 and another Doman Mahte in serial number 548. The Electoral Roll (Ext. B) shows that no ballot paper was issued to Doman Gope of serial number 429. Even assuming that Doman Das, son of Ranjit Das, of serial number 375, did not go to the polling station to cast his vote, it is possible that, on account of confusion created by so many entries in the Electoral Roll in the name of Doman, it was noted by mistake that ballot paper number 6127 had been issued to the elector of serial number 375.

We, in conclusion, find that the petitioner has failed to establish false personation of Doman Das at the instance of respondent No. 1.

Let us, now, deal with the alleged false personation of Sarjug Singh. It is alleged by the petitioner that Sital Das, a Socialist worker, procured a vote by means of false personation of Sarjug Singh of village Karna who was entered as elector in serial number 175, owning house number 28. It is said that Sarjug

Singh was in Central Jail at Bhagalpur on the date of polling and another person was set up by Sital Das to falsely impersonate him. From the evidence it appears that in village Karna there were as many as seven persons bearing the name Sarjug, out of whom five had the title "Singh", one the title "Thakur", and one the title "Mandal". The marked copy of the Electoral Roll of village Karna (Ext. B1) shows that five Sarjug Singhs (in serial Nos. 54, 77, 175 and 212) and Sarjug Thakur (in serial number 48) were electors; but we do not find the name of Sarjug Mandal as an elector in the Electoral Roll. One Mohan Mistri (R.W. 23) of village Karna has stated in his evidence that Sarjug Mandal was not an elector and he was never known by the name of Sarjug Singh. Ext. B1 further shows that Sarjug Thakur of serial number 48 and Sarjug Singh of serial number 77 did not vote at the bye-election, while the remaining 4 Sarjug Singhs voted. During the examination of the ballot papers by the Tribunal it was found that Sarjug Singh of serial number 175 had voted in favour of Tribeni Kumar.

The first thing that the petitioner has to prove is that Sarjug Singh of serial number 175 was in Central Jail at Bhagalpur on the date of polling. Some witnesses on behalf of the petitioner and respondent No. 2, namely, Basudeo Prasad Singh (P.W. 2), Brahmdeo Prasad Singh (P.W. 6) and Rameshwar Ram (R.W. 3 for respondent No. 2), have tried to prove that Sarjug Singh was in Jail on the date of polling. The Register of Bhagalpur Central Jail was also called in evidence and the entries therein show that one Sarjug Mandal, son of Bhothri Mandal, of village Karna, P.S. Parbatta, was admitted in Jail on 21st December 1952 and was formally discharged from the Jail on 10th September 1953, but as he was ill he was detained in Jail for some time longer and was made over to his uncle, Mohan Mistri, on 26th September 1953 (*vide* Exts. 15 series). After the above Register was admitted in evidence, attempt was made by the petitioner to show that Sarjug Mandal was also known by the name of Sarjug Singh. The witness, Rameshwar Ram, deposed on this point. No such statement was made by P.W. 2 and P.W. 6 who were examined earlier. We have considered the evidence of the above named three witnesses and we do not find it to be reliable and trustworthy. The petitioner has failed to connect Sarjug Singh of serial number 175 with Sarjug Mandal entered in the Jail Register.

On the other hand, there is sufficient evidence on behalf of respondent No. 1 showing that Sarjug Mandal, son of Bhothri Mandal, who was in Jail on the date of polling, is not the same person as Sarjug Singh, who was entered as elector in serial number 175. The evidence of Mohan Mistri, *alias* Mohan Mandal (R.W. 23) is very important. He says that Sarjug Mandal, who was in Jail, was his nephew. He says further that Sarjug Mandal was not known by the name of Sarjug Singh. From his evidence it appears that Sarjug Mandal died after he was released from the Jail. This fact is also admitted by Rameshwar Ram (witness for respondent No. 2). Mohan Mistri also says in his evidence that he was present at the release of Sarjug from the Jail. This statement is corroborated by the entry [Ext. 15(b)] in the Jail Register. It has been suggested by the petitioner that Mohan Mistri belongs to a different caste from that of Sarjug Mandal and that Sarjug used to call Mohan as uncle by village courtesy. There are no reliable materials to support this suggestion.

The next thing that the petitioner is required to prove is that Sital Das was an agent of respondent No. 1 and he procured a vote by setting up a person to falsely impersonate Sarjug Singh of serial number 175. There is no satisfactory evidence to prove these allegations. Two witnesses, Brahmdeo Prasad Singh (P.W. 6) and Sukhdeo Das (P.W. 38), have deposed on this point. P.W. 6 says that he was employed for issuing *chithas* to voters at Parbatta polling station on behalf of the Socialist candidate. It appears that *chithas* were given to voters by agents of candidates for the purpose of facilitating the identity of voters. The witness, further, says that Sital Das, who was also a worker on behalf of the Socialist candidate, asked him to issue a *chitha* to a person in the name of Sarjug Singh and that he issued a *chitha* accordingly. P.W. 38, who claims to be a voter, says that he heard Sital Das asking Brahmdeo Singh to issue a *chitha* to a man in the name of Sarjug Singh who was in Jail. We are not impressed with the story told by the above witnesses. On the other hand, Sital Das (R.W. 22) has denied that he did any work for the Socialist party or for the Socialist candidate.

Respondent No. 1 has examined one Sarjug Singh (R.W. 24), son of Benga Singh, resident of village Karna, who has said that he cast his vote at Parbatta polling station. The respondent has tried to connect this witness with Sarjug Singh of serial number 175, owning house number 28. From the Electoral Roll (Ext. B1) it appears that, besides Sarjug Singh, Suraj Narain Singh, Mogal Singh, Daroga Singh, Tilak Singh, Jagdhari Singh, Uchit Singh and Asharfi Singh are

also male electors in house No. 28, while Fulia Devi, Basanti Devi, Reshmi Devi and Rupia Devi are female electors in that house. While this witness admits relationship with the above named male electors, he says that he does not know the females named above. The evidence of this witness is, therefore, of doubtful nature. But even assuming that R.W. 24 is not connected with Sarjug Singh of serial number 175, the petitioner's case is not established thereby, and the petitioner cannot succeed unless he proves that Sarjug Singh of serial number 175 was in Jail on the date of polling and that the agent of respondent No. 1 procured a vote in the name of that Sarjug Singh by means of false personation. As already observed above, the petitioner has failed to prove these facts.

The conclusion is, therefore, irresistible that the petitioner has failed to establish false personation of Sarjug Singh at the instance of respondent No. 1's agent and we find accordingly.

Lastly, we deal with the alleged false personation of Sahdeo Singh. It is alleged in the particulars in schedule "A" that respondent No. 1 procured a vote by means of false personation of Sahdeo Singh (of village Karna, serial number 111, house number 17) who was dead. P.W. 6 says in his evidence that respondent No. 1 had asked him to issue a *chitha* to a person in the name of Sahdeo Singh and that he issued a *chitha* accordingly. The marked copy of the Electoral Roll (Ext. B1), however, shows that no ballot paper was issued to Sahdeo Singh of serial No. 111. The evidence of P.W. 6, even if it be accepted, will only show that respondent No. 1 attempted to procure a vote by means of false personation. But in the particulars a case of procuring, and not a case of attempting to procure, has been set up.

The Electoral Roll (Ext. B1) shows that in village Karna there were two electors bearing the name, Sahdeo Singh. One was entered in serial number 111, owning house No. 17, and another in serial number 555, owning house number 21. Neither of them was supplied ballot paper. P.W. 6 says in his evidence that Sahdeo Singh of house No. 17 was dead on the date of polling. The Death Register (Ext. 7) shows that Sahdeo Singh, son of Hital Singh, of village Karna died on 14th January 1953. P.W. 6 further says that he did not know the person to whom he issued the *chitha*. It is possible that that person was Sahdeo Singh of serial number 555. Further, the story told by P.W. 6 is not free from doubt. No ballot paper was issued to any Sahdeo Singh and there is no evidence that any person applied for a ballot paper in the name of Sahdeo Singh. We cannot, therefore, hold, upon the evidence of P.W. 6, that respondent No. 1 attempted to procure a vote by means of false personation of Sahdeo Singh.

The next corrupt practice alleged by the petitioner is "bribery", defined in section 123(1) of the Representation of the People Act, 1951. The allegations regarding this corrupt practice, as made in paragraph 8(c) of the election petition and paragraph 3 of schedule "A", are that respondent No. 1 and his agents, Bisundeo Jadav, Shivakant Singh and Ramanand Choudhry, went about telling the voters, throughout the Parbatta Constituency, on the day of election and also during the period of 15 days immediately preceding the election, that if they voted for respondent No. 1, they would be getting lands out of the lands procured by the Socialist party by dispossessing rich land holders of the locality. The alleged bribery, thus, consists in promise of gift of lands.

" Four witnesses have deposed on behalf of the petitioner on this point. Dasrath Prasad Singh (P.W. 16) has deposed that Bisundeo Jadav and Shivakant Singh, who were working for Tribeni Kumar, proclaimed among the voters in village Bharatkhand that those who would vote for the Socialist candidate would be given such lands as would be obtained by dispossessing rich people. From his cross-examination it appears that he heard such proclamation being made at the houses of Jamadar Mandal, Genda Jadav and Bedanand Mishra. Bedanand Mishra (P.W. 28) has said in his evidence that, three or four days before the polling, Bisundeo Jadav and Shivakant Singh addressed some voters at his house saying that if they voted for the Socialist candidate, they would be given lands that would be obtained by dispossessing rich people. Chhedi Choudhry (P.W. 17) has said that, one week before the date of polling, Bisundeo Jadav and Shivakant Singh addressed 25 or 30 voters of village Bharatkhand, making such promise. Chaturanan Sharma (P.W. 18) has deposed that Ramanand Choudhry, who was canvassing for the Socialist party, addressed some voters at village Khajraitha to this effect, "You vote for the Socialist party, you are poor men, you will get lands that would be obtained by dispossessing rich people". From the cross-examination of this witness it appears that Ramanand Choudhry told the people that the Socialist party was the party of the poor and that lands, obtained from the rich, would be distributed among the poor.

On behalf of the respondent, Shivakant Singh (R.W. 6), Bisundeo Jadav (R.W. 11) and Ramanand Choudhry (R.W. 15) have deposed that they did not do any canvassing for Tribeni Kumar. Nandkishor Mishra (R.W. 3), an elector of Bharatkhand, has also said that Shivakant Singh and Bisundeo Jadav did not do any canvassing for Tribeni Kumar in his village.

After considering the entire evidence produced by both the parties, we hold that the petitioner has failed to prove that the agents of respondent No. 1 committed the corrupt practice of bribery by promising gift of lands. Even if the petitioner's evidence be accepted, we think that it falls short of establishing the alleged bribery. It seems to us that there was a general propaganda on behalf of the Socialist party indicating the policy of the party to be adopted if the party came into power. This is amply demonstrated by the evidence of P.W. 18. Such general propaganda on behalf of a party does not amount to bribery.

We shall, next, deal with the corrupt practice of undue influence referred to in paragraph 3(c) of the election petition and paragraph 4 of schedule "A". It is alleged that respondent No. 1 and Ramanand Choudhry threatened voters of Dumaria Buzurg, Aguani and Khirahi *alias* Khirani on 10th April 1953 saying that the voters who would vote, or would be heard to have voted, for the Congress candidate, Lakhun Lal Mishra, would be ex-communicated, would not be allowed to take water from the wells of the village and would be dispossessed of their lands. It is noteworthy that not a single name of the person threatened has been given in the particulars in paragraph 4 of the schedule.

Six witnesses have been examined by the petitioner on this point; they are P.W. 13, P.W. 16, P.W. 17, P.W. 24, P.W. 25 and P.W. 27. P.W. 13 (Jamuna Prasad Jadav) is an elector of village Lagar. He says that two days before the polling, he had gone to village Khirani where he found Ramanand Choudhry addressing about 40 voters and holding out the above threats. He has said in his cross-examination that he had gone to Khirani on a private confidential business which he cannot disclose. He has said further that he did not recognise any out of the 40 voters who had been threatened. We are not impressed with the evidence of this witness. P.W. 16 (Dasrath Prasad Singh), an elector of village Bharatkhand, has deposed that he had gone to village Aguani on 10th April 1953 and had seen Ramanand Choudhry and Tribeni Kumar addressing people and holding out such threats. He says that he recognised Audh Kishor Singh, Maheshwar Singh and Chakrapani Singh among the persons assembled. None of those persons has been examined in this case. P.W. 17 (Chhedi Choudhry) an elector of Mauza Mathurapur, says that on 10th April 1953 he had gone to Dumaria Buzurg where he noticed Ramanand Choudhry addressing a gathering of 250 or 300 persons and holding out such threats. P.W. 24 (Mohammad Ibrahim) is a resident of Mauza Temtha. He says that he is Dafadar of circle No. 4 which includes Dumaria Buzurg. He says further that he had gone to Dumaria Buzurg on 10th April 1953 and had seen there Ramanand Choudhry addressing 150 or 200 persons and holding out such threats. This witness, while giving evidence, identified a wrong person as Ramanand Choudhry. From his cross-examination it appears that he had gone to Dumaria Buzurg on no particular mission. He says that, out of the persons assembled, he recognized Jatti Choudhry, Surju Choudhry and Sarjug Choudhry. None of them has been examined in this case. The evidence of this witness is of extremely doubtful nature. P.W. 25 (Kartik Singh) and P.W. 27 (Sajiwan Singh) are electors of Mauza Aguani. They have said that they saw Ramanand Choudhry addressing a gathering of 150 or 200 persons at Aguani two days before the polling and holding out such threats. From the evidence of P.W. 27 it appears that Tribeni Kumar who was also present, did not speak anything in that gathering. But P.W. 16, as noted above, has said that both Ramanand Choudhry and Tribeni Kumar addressed the gathering. The evidence produced by the petitioner is not at all convincing and satisfactory.

Ramanand Choudhry (R.W. 15) has denied that he held out any threat to voters at Aguani, Khirahi and Dumaria Buzurg. It may be mentioned that this witness is employed as Headmaster of Beldaur H.E. School and he owns about 25 bighas of lands, those lands being situated in Dumaria Buzurg. He does not appear to be a powerful person in the locality and the story that he held out such threats can hardly be believed. Sushil Singh (R.W. 5), an elector of Aguani, has said that there was no meeting in his village on 10th April 1953 and that Ramanand Choudhry and Tribeni Kumar never held any meeting in his village.

We, in conclusion, find that the petitioner has failed to establish the alleged corrupt practice of undue influence by holding out threats.

It may be mentioned in this connection that respondent No. 1 has alleged in paragraph 10 of his written statement that he took all reasonable means for preventing the commission of any corrupt or illegal practice at the election. Respondent No. 1 (R.W. 30) has said in his evidence that he issued instructions to his workers that no illegal work should be done on his behalf at the election. It appears that printed leaflets containing such instructions were distributed among workers of respondent No. 1. Some of the printed leaflets (Exts. G series) have been produced in this case; the leaflets were printed on 1st April 1953. The instructions contained in the leaflets corroborated the statement of R.W. 30. The statement of R.W. 30 on this point has also been corroborated by the evidence of his polling agents, R.W. 10 (Sant Lal Jadav) and R.W. 18 (Ram Sarup Singh).

The result, therefore, is that this issue is decided against the petitioner.

Issue No. 6.—The allegations in regard to this issue are made in paragraph 9 of the election petition. The petitioner has alleged six instances of non-compliance with the provisions of the Representation of the People Act and the Rules made thereunder, but at the hearing only three instances given in sub-paras. (a), (b) and (c) of paragraph 9 were pressed.

In sub-para. (a) it is alleged that the then A.S.I. of police of Choutham, on deputation at Kanhaiyachak polling station, acted for the furtherance of the prospects of the election of respondent No. 1 by persuading and influencing voters to vote for respondent No. 1. Section 129(2) of the Representation of the People Act, 1951, provides, *inter alia*, that no member of police force shall endeavour to persuade any person to give his vote at an election or to influence the voting of any person at an election in any manner. From sub-section (3) of that section it appears that any person who contravenes the above provision of sub-section (2) commits an electoral offence and is liable to be punished in a certain manner. So, if the A.S.I. of police did any such thing, he was guilty of an electoral offence and was liable to be punished under section 129(3) of the Act. But, for the purposes of this case, we have to enquire whether there was contravention of the provisions of section 129(2) of the Act by reason of a Police Officer endeavouring to influence the voting of any person at the election and whether the result of the election has been materially affected by such contravention. The above allegation against the Police Officer of Kanhaiyachak polling station may have some bearing on the question of the corrupt practice contemplated by section 123(8) of the Act, namely, the obtaining by a candidate or his agent assistance for the furtherance of the prospects of the candidates' election from any Government servant. But, as it has not been clearly alleged that the assistance of the A.S.I. of police was obtained by respondent No. 1 or his agent or by any other person with the connivance of respondent No. 1 or his agent and as this matter has not been placed under the head of corrupt or illegal practice, but has been placed under the head of non-compliance with the provisions of the Act and the Rules made thereunder, we shall consider the allegation under the latter head.

Seven witnesses on behalf of the petitioner, namely, P.W. 5, P.W. 8, P.W. 12, P.W. 22, P.W. 29, P.W. 31 and P.W. 39 have deposed in this matter. P.W. 5 (Narain Prasad Choudhry) has said that the A.S.I. of Choutham, named Ramchandra Prasad, asked him to vote for respondent No. 1. P.W. 8 (Balram Choudhry) has deposed that the A.S.I. of Choutham, who was on duty at Kanhaiyachak polling station, exhorted 40 or 50 voters within the enclosure of the booth to vote for Tribeni Kumar. This witness was the polling agent of the rival candidate at that polling station, but still he did not file any written complaint in this matter to the Presiding Officer. P.W. 12 (Satya Narain Roy), P.W. 12 (Jang Bahadur Singh), P.W. 29 (Asraf Khan), P.W. 31 (Sheo Shankar Prasad) and P.W. 39 (Ramchandra Mishra, petitioner in this case), who all claim to be voters, have said in their evidence that the A.S.I. asked some voters to vote for Tribeni Kumar. Kanhaiyachak is the village home of the rival candidate, Lakhan Lal Mishra. P.W. 39, who claims to have seen the illegal activities of the police officer on duty, is a near relation of the rival candidate. It does not seem possible that a police officer on duty carried on canvassing on behalf of the Socialist candidate at the polling station in the village of the rival candidate without his illegal activities being noticed or checked by other Officers there. The evidence produced by the petitioner is not satisfactory and we hold that the allegations have not been proved.

The next allegation of non-compliance is that poll at two polling stations at Nayagaon, namely, Jorawarpur M.E. School and Mohiud-dinpur H.E. School, was closed ten minutes before 4 p.m. with the result that about 500 and 200 voters respectively of those polling stations could not cast their votes. From Ext. 12 it appears that the Returning Officer had announced that poll would be held from 8 a.m. to 4 p.m. at all the polling booths. Rule 17(2) of the Representation of

the People (Conduct of Elections and Election Petitions) Rules, 1951, requires the Presiding Officer to close the polling at the hour fixed. It is contended by the petitioner that there was contravention of the above rule by reason of the poll being closed earlier

Four witnesses, namely, P.W. 3, P.W. 4, P.W. 20 and P.W. 34, have deposed about the closing of the poll at Jorawarpur M.E. School and two witnesses, namely, P.W. 9 and P.W. 11, have deposed about the closing of the poll at Mohiud-dinpur H.E. School. P.W. 3 (Ram Subhag Singh) was the polling agent of the rival candidate at Jorawarpur M.E. School. He says in his evidence that ten minutes before 4 P.M. the gate of the enclosure of the booth was closed and about 400 or 500 voters, who had assembled outside the enclosure, were not allowed to go in and when he protested, the Presiding Officer declared that he would not allow the voters to go in as time was up. The witness, further, says that he filed a written petition before the Presiding Officer. That written petition is not in evidence before us. P.W. 4, P.W. 20, P.W. 34, P.W. 9 and P.W. 11 were all voters and their evidence shows that they were able to cast their votes, but other voters were not allowed access on the ground that time was up. None of those voters has been examined as witness in this case. P.W. 4 has named two voters, Rijhan Singh and Uchit Singh who could not vote. They have not been examined. From the evidence of P.W. 11 it appears that Bishwanath Prasad Singh, the polling agent of the rival candidate, protested against the poll being closed ten minutes earlier. Bishwanath Prasad Singh has not been examined. It is difficult to hold upon the evidence produced by the petitioner that the poll was closed before 4 P.M. On the contrary, the evidence of the Assistant Returning Officer (R.W. 29), who visited the polling stations at Nayagaon that day, shows that the poll there closed exactly at 4 P.M. The petitioner's story is, therefore, rejected.

The last allegation of the petitioner is that poll did not take place at certain places named in the List of Polling Stations (Ext. 12) with the result that many voters were misled. It is alleged that it was announced that poll would take place in U.P. Schools at Kanhaiyachak, Dumaria Buzurg, Temtha, Thebhai, and Lagar, but poll actually took place in L.P. Schools in those villages. From the evidence of P.W. 7, P.W. 13, P.W. 33 and R.W. 7 it appears that there were no U.P. Schools in those villages, but those villages have L.P. Schools. P.W. 7 (Hriday Naran Sharma) has, however, said that there are two L.P. Schools in village Thebhai, one in tola Thebhai and another in tola Sumeri. It appears that poll took place in L.P. School in tola Thebhai. P.W. 7, who claims to be the polling agent of the rival candidate at Thebhai L.P. School, says in his evidence that the voters of Sumeri Tola had assembled at Sumeri tola L.P. School and that 101 or 125 voters came very late from Sumeri tola to Thebhai L.P. School booth, but out of them 15 or 20 only were able to cast their votes and the remaining voters could not vote as time was up. R.W. 4 (Rasik Lal Sah), a resident of Sumeri tola has, on the other hand, deposed to the effect that there was no assemblage of persons at Sumeri tola L.P. School and that the people of his tola voted and were not misled by reason of the poll taking place at Thebhai L.P. School. From the cross-examination of P.W. 7 it appears that polling booth was constructed at Thebhai L.P. School, and no booth was constructed at Sumeri L.P. School. From his cross-examination it, further, appears that there was proclamation in his village that poll would be held at Thebhai L.P. School. In these circumstances, it is difficult to believe the story told by P.W. 7 that voters of Sumeri tola were misled. There is also no evidence worth the name to support the suggestion that voters of Kanhaiyachak, Dumaria Buzurg, Temtha and Lagar were misled by reason of the poll taking place at L.P. Schools. It appears that U.P. Schools were wrongly entered in the List of Polling Stations (Ext. 12) and the electors of those villages knew very well that poll would take place at L.P. Schools. This story of the petitioner is also rejected.

We, therefore, decide this issue against the petitioner

Issue No. 7.—In view of the above findings, we hold that the petitioner is not entitled to any relief.

The result, therefore, is that the election petition fails

ORDER

The election petition be dismissed with Rs. 500 (five hundred) as cost to the contesting respondent No. 1.

(Sd.) BASU PRASAD, *Chairman*.

(Sd.) HARGOBIND PRASAD SINHA, *Member*.

(Sd.) ADITYA NARAYAN LAL, *Member*.

PATNA;

The 6th February, 1954.

Typed at my dictation and revised and corrected by me.

(Sd.) BASU PRASAD, *Chairman*.

[No. 82/7/53/3697.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*